

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

GARY SWARTHOUT, as Warden, etc.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

CULVER CITY POLICE DEPARTMENT,

Real Party in Interest.

B241132

(Los Angeles County
Super. Ct. No. A468114)

ORDER: (1) MODIFYING
OPINION AND (2) ORDER
DENYING PETITION FOR
REHEARING

[NO CHANGE IN JUDGMENT.]

BY THE COURT:

It is ordered that the opinion filed herein on August 16, 2012, is modified as follows:

On page 12, line four, add new footnote 10 after the word “circumstances.” The footnote reads:

Subsequent to the trial court’s issuance of its order temporarily
transferring J.T., the Legislature amended Penal Code

section 2690, as an urgency matter, to provide that the Secretary of the Department of Corrections and Rehabilitation may authorize the temporary removal of any inmate from prison in order to “permit[] the inmate to participate in or assist with the gathering of evidence relating to crimes.” (Stats. 2012, ch. 145, § 1.) The City argues that this amendment implies that orders to release inmates for investigative purposes “have now been expressly approved by the California Legislature as being a proper exercise of the judicial function.” On the contrary, the Legislature granted authority for such orders to the Secretary of the Department of Corrections, not the courts. Moreover, the Secretary of the Department of Corrections is, by this statute, granted discretion to authorize the temporary removal of an inmate for investigative purposes; such authority necessarily includes the discretion on the part of the Secretary to refuse a request for such removal. That appears to be precisely what occurred in this case, as the warden, acting on behalf of the Department of Corrections, denied the request for removal.

The remaining footnote is to be renumbered.

The petition for rehearing filed by the City is denied.

[There is no change in the judgment.]